



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31069720

Date: JUNE 20, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an urban game designer, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification as set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A noncitizen is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation.
- They seek to enter the United States to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner claim that he qualifies as an individual of extraordinary ability in the arts based on his years of experience as an urban game designer, which included developing urban games in Europe and acting as an interim department chair and assuming the role of game lab manager at the [REDACTED]

[REDACTED] Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that he meets the five regulatory listed at 8 C.F.R. § 204.5(h)(3)(i), (iv), (v), (vii), and (viii). The Director determined that the Petitioner demonstrated that he has performed in a leading or critical role with organizations that have a distinguished reputation and therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The record supports this determination.

The Director concluded, however that the Petitioner did not establish that he met any of the remaining criteria that he claimed, namely, the four criteria listed at 8 C.F.R. § 204.5(h)(3)(i), (iv), (v), and (vii). On appeal, the Petitioner asserts that he meets at least three criteria and is otherwise eligible for the requested classification. He contends that the Director overlooked or disregarded certain evidence and applied requirements that are not indicated by the regulations or U.S. Citizenship and Immigration Services policy. Upon review, we conclude that the Petitioner has met at least two additional criteria.

First, the record supports the Petitioner's assertion that the Director imposed additional requirements that are not specified in the regulation concerning the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence demonstrating a petitioner's participation as a judge of the work of others in the same or an allied field. Namely, the Director determined that the record lacks evidence "showing the names of the participants evaluated by the petitioner, their level of expertise, the specific competitive categories he judged, and the significance and magnitude of the competition." The Petitioner points to USCIS policy as guidance regarding this criterion, asserting that the Director listed factors that represent "substantive novel standards" and should not be required to satisfy the criterion in question. *See* 6 USCIS Policy Manual, F.2(B)(1), <https://www.uscis.gov/policy-manual>, ("The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of others in the same or allied field of specialization.")

The Policy Manual further notes, “For example, a petitioner might document the person’s peer review work by submitting a copy of a request from a journal to the person to do the review, accompanied by evidence confirming that the person actually completed the review.”)

On appeal, the Petitioner points to previously submitted evidence documenting his review of a paper that was submitted to an international conference of applied arts faculty with focus on interaction between science and fields of applied art. The Petitioner also points to evidence showing that he was chosen to be a judge on a “multidisciplinary jury” that determined which applicants would be selected for admission to [REDACTED] Based on this evidence, the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

Likewise, the record supports the Petitioner’s assertion that the Director imposed additional requirements that are not specified in the regulation concerning the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires evidence that the Petitioner’s work has been displayed at artistic exhibitions or showcases. The Petitioner contends, and we agree, that the Director unnecessarily imposed “substantive novel standards” by noting the lack of evidence showing that the Petitioner’s “works have often been featured alongside those of artists who enjoy national or international reputations” and demonstrating “his regular participation in shows or exhibitions at major venues devoted to the display of his work alone.” *See id.*

Regarding artistic displays, the Petitioner points to previously submitted evidence documenting his participation in [REDACTED] a joint project in which one of the two organizers is the “national centre for artistic creation in public space.” This project involved artistic displays, including a project of the Petitioner. The printed material about the [REDACTED] event repeatedly references “artistic projects” as the focus of the joint project and refers to the project participants as “artists,” highlighting art as a means for achieving social and economic empowerment or development of cultural policy. Importantly, the event material refers to the Petitioner as one of “seven artists” displaying one of “seven participatory art practices” as a form of “artistic expression[,]” and states that through his presentation, the Petitioner as “the artist” conveys “his philosophical and conceptual search.” We therefore find that the Petitioner has provided sufficient evidence to demonstrate that he has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vii).

With eligibility under these two additional criteria, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director’s decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. USCIS must now determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

On remand, the Director should evaluate the evidence and consider the petition in its entirety to make a final merits determination. In the final merits determination, the Director should weigh the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), any other relevant evidence in the record, and the Petitioner's claims and evidence on appeal to determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.